

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

RHONDA BURNETT, JEROD BREIT,
HOLLEE ELLIS, FRANCES HARVEY,
and JEREMY KEEL, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF
REALTORS, et al.,

Defendants.

Case No. 19-CV-00332-SRB

PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE AND TO STAY

One day before the Court's final approval hearing, Rosalie Doyle, Jessica Winters, and John Guerra filed a purported "Motion to Intervene and to Stay this Action." Doc. 1605. The Motion should be denied because, among other things, it is untimely. Rule 24 expressly requires such a motion, whether as of right or permissive, to be timely. *See* Rule 24(a) and (b); *Osby v. Citigroup*, No. 5:07-CV-06085-NKL, 2012 WL 12906156, at *2 (W.D. Mo. May 29, 2012) (citing *United States v. Union Elec. Co.*, 64 F.3d 1152, 1158 (8th Cir.1995)). The relevant factors for determining whether a motion to intervene is timely are: "(1) how far the litigation had progressed at the time of the motion for intervention, (2) the prospective intervenor's prior knowledge of the pending action, (3) the reason for the delay in seeking intervention, and (4) the likelihood of prejudice to the parties in the action." *Id.* (citing *United States v. Ritchie Special Credit Invs., Ltd.*, 620 F.3d 824, 836 (8th Cir. 2010)).

The Eighth Circuit has previously upheld a district court's finding that a motion to intervene filed four months after preliminary approval of the settlement agreement was

untimely. *See In re Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation*, 716 F.3d 1057, 1066 (8th Cir. 2013). Additionally, cases from other circuits uniformly find that comparable motions to intervene are untimely. *D'Amato v. Deutsche Bank*, 236 F.3d 78, 84 (9th Cir. 2001) (upholding finding of untimeliness for motion filed 3 days before fairness hearing); *Scott v. Bond*, 734 Fed.Appx. 188, 190-92 (4th Cir. 2018) (upholding finding of untimeliness for motion filed after request for preliminary approval of settlement agreement); *CE Design Ltd. V. King Supply Co.*, 791 F.3d 722, 724-26 (7th Cir. 2015) (upholding finding of untimeliness for motion filed after settlement agreement was reached, but before district court approval); *Choike v. Slippery Rock Univ. of Pennsylvania of State System of Higher Education*, 297 Fed.Appx. 138, 141 (3d Cir. 2008) (upholding finding of untimeliness for motion filed after the parties reached a class action settlement where “no legitimate reason” for the delay in filing the motion was given).

Here, it cannot be contested that the motion is untimely and must be rejected both under Rule 24(a) and (b) and the Court’s own schedule for raising objections to the Settlement. Nor do movants provide any reason for the delay in filing. Moreover, they fail to comply with Rule 23(c)’s pleading requirement.

Finally, even if the motion were timely, the issues raised do not demonstrate that the Settlement should be denied. Rather, the issues raised appear be between NAR and some of its members. NAR has governance procedures and if its members are unhappy with NAR actions, there are more appropriate means of redressing such disputes than to derail settlement and stay this action.

The Motion to Intervene should be denied.

November 26, 2024

Respectfully Submitted,

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